



*DR*

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN-02-155-53637

Office: Nebraska Service Center

Date:

FEB 10 2003

IN RE: Petitioner:  
Beneficiary:

[Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development business with two employees and a projected gross annual income of \$60,000. It seeks to employ the beneficiary as a marketing manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires a baccalaureate degree in a specific specialty. On appeal, counsel states, in part, that the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) finds that the educational requirements for marketing managerial jobs vary. Counsel also states that the record contains an expert opinion, in addition to various job postings, to demonstrate that the proffered position is a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

In this position, [the beneficiary] will manage and coordinate the marketing, promotional, and sales activities of G2 software products.

As Marketing Manager, [the beneficiary] will prepare and execute marketing plans, design product brochures, and organize and manage promotional, direct mail, and email

campaigns. [The beneficiary] will prepare and distribute news releases. He will develop and present product demonstrations, presentations, and seminars and represent the Company at Trade Shows. [The beneficiary] will develop and integrate the Company's on-line (web) presence with all other marketing programs and will work closely with sales, telemarketing, administrative, and technical staff as well as contractors. Please note this is an entry-level marketing manager position working under close supervision of the company President.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree or higher in business administration or a related field. A review of the DOL's Handbook, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in a marketing managerial job. A wide range of educational backgrounds are suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. The DOL also states (as mentioned by counsel in his appeal) as follows: "In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred." In this case, however, the petitioner has not

demonstrated that it is engaged in highly technical work, such as computer and electronics manufacturing, or that the beneficiary holds a bachelor's degree in engineering or science (in a field related to the proffered position). Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration, for the offered position. Third, although the record contains various job advertisements, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record contains an opinion from an academic expert. The writer states, in part, as follows:

The marketing of enterprise software is a professional and highly technical position. Unlike the marketing of other products, information technology marketing requires a background in business, marketing, and information technology. Theoretical knowledge of such fields as engineering, electronics, and/or computer science is crucial to these high-tech sales positions.

In this case, the record does not demonstrate that the petitioner requires that its marketing manager possess theoretical knowledge of such fields as engineering, electronics, or computer science. Rather, the beneficiary's educational background has been found to be equivalent to a bachelor of science degree in chemistry and a master's degree in business administration. Although the record indicates that the beneficiary has taken some computer coursework, the petitioner has not demonstrated that it is sufficient to overcome the beneficiary's lack of a science degree in a specific and related field of study.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.